

**ORIGINAL**

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OF COUNSEL  
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FAX (301) 986-4844

\*NOT ADMITTED IN MD

December 13, 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**RE: MM Docket No. 93-107**

Dear Mr. Caton:

Transmitted herewith are an original and eleven copies of a Joint Request, seeking approval of a Settlement Agreement, and related actions in order to terminate the above-referenced proceeding in which five applicants are seeking a construction permit for a new FM broadcast station to operate on Channel 280A at Westerville, Ohio. This Joint Request is being submitted pursuant to the Public Notice (FCC 95-391), released September 15, 1995.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner  
Counsel for  
ASF BROADCASTING CORP.

Enclosures

cc: Arthur Belendiuk, Esq.	(w/ encl.)
Eric S. Kravetz, Esq.	(w/ encl.)
Dan J. Alpert, Esq.	(w/ encl.)
Stephen T. Yelverton, Esq.	(w/ encl.)
William D. Silva, Esq.	(w/ encl.)

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

RECEIVED  
DEC 11 1995  
FEDERAL COMMUNICATIONS COMMISSION

In re Applications of	)	MM Docket No. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	
ASF BROADCASTING CORP.	)	File No. BPH-911230MB
	)	
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES	)	File No. BPH-911231MC

For Construction Permit for an  
FM Station on Channel 280A in  
Westerville, Ohio

To: The Review Board

**JOINT REQUEST FOR  
APPROVAL OF SETTLEMENT AGREEMENT,  
DISMISSAL OF PENDING PLEADINGS,  
DISMISSAL OF APPLICATIONS  
AND GRANT OF APPLICATION**

David A. Ringer ("Ringer"), ASF Broadcasting Corp. ("ASF"), Wilburn Industries, Inc. ("Wilburn"), Shellee F. Davis ("Davis"), and Ohio Radio Associates ("ORA"), applicants for a new FM station to operate on Channel 280A at Westerville, Ohio, by their respective attorneys, and pursuant to Section 73.3525 of the Commission's Rules, and Public Notice (FCC 95-391), released September 15, 1995, hereby jointly request approval of the Settlement Agreement submitted herewith as Attachment A (the "Agreement"), and other actions as delineated herein. In support hereof, the following is shown:

The above-captioned applications are mutually-exclusive. An evidentiary hearing has been held, and an Initial Decision has

been issued. The applications are currently before the Review Board on Exceptions. Also before the Board are numerous other petitions, including petitions for leave to amend, and other requests. A list of the pending petitions, oppositions, replies, etc. is attached hereto as Attachment B.

The parties respectfully request that the Review Board simultaneously (a) approve the Agreement; (b) grant the petitions for leave to amend filed by Davis; (c) dismiss or deny all other petitions and motions; (d) dismiss the applications of Ringer, ASF, Wilburn, and ORA with prejudice; and (e) grant the application of Davis, as amended, without material adverse conditions.

In the event that any application cannot be granted without further proceedings, the parties request that an interlocutory Order to that effect be issued, or that the parties be otherwise informed so that the parties may amend this Joint Request in accordance with the Agreement to seek the grant of another applicant if necessary.

Pursuant to the Agreement, each of the Dismissing Applicants is to receive monetary consideration in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to be paid by the Successful Applicant, whose application is granted, upon finality of the approval of the Agreement and grant of that application.

In accordance with Section 73.3525 of the Rules, Declarations of each the parties are contained in the Settlement Agreement. Each party has declared under penalty of perjury, that there are no other agreements between or among the parties, and that no applicant filed its application for the purpose of reaching or carrying out a settlement agreement. Since the Commission has waived the limitations imposed by Section 73.3525(a) of the Rules, no documentation of the expenses of the Dismissing Applicants is required or included herein.

Approval of this Agreement would further the public interest by enabling the Commission and the applicants to conserve resources that would otherwise be expended in further proceedings before the Review Board or otherwise, and expediting the revival of this FM service to Westerville, Ohio.

WHEREFORE, in light of the foregoing, the parties hereto respectfully request that the Settlement Agreement be approved, that the various petitions and motions (other than petitions seeking leave to amend) be dismissed or denied, that the applications of Ringer, ASF, Wilburn, and ORA be dismissed, and that the application of Shellee F. Davis be granted.

- 4 -

Respectfully submitted,

DAVID A. BIKER

By: 

Arthur Balendiuk, Esq.  
Smithwick & Balendiuk, P.C.  
1990 M Street, N.W.  
Washington, D.C. 20036  
(202) 785-2800

ASF BROADCASTING CORP.

By: \_\_\_\_\_

James A. Koerner, Esq.  
Baraff, Koerner, Clender  
& Hochberg, P.C.  
Three Bethesda Metro Center  
Bethesda, Maryland 20814  
(301) 986-0500

WILBURN INDUSTRIES, INC.

By: \_\_\_\_\_

Eric S. Kravetz, Esq.  
Brown, Nieter & Kaufman,  
Chartered  
1920 N Street, N.W.  
Washington, D.C. 20036  
(202) 887-0600

SHELLEN F. DAVIS

By: \_\_\_\_\_

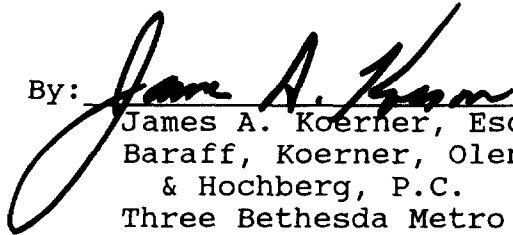
Dan J. Alpert, Esq.  
Law Offices of Dan J. Alpert  
2120 N. 21st Road  
Arlington, Virginia 22201

Respectfully submitted,

**DAVID A. RINGER**

By: \_\_\_\_\_  
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**ASF BROADCASTING CORP.**

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**WILBURN INDUSTRIES, INC.**

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**SHELLEE F. DAVIS**

By: \_\_\_\_\_  
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- 4 -

Respectfully submitted,

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SHARLES F. DAVIS

By: Dan J. Alpert, Esq.  
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Arlington, Virginia 22201

- 4 -

Respectfully submitted,

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Washington, D.C. 20036  
(202) 785-2800

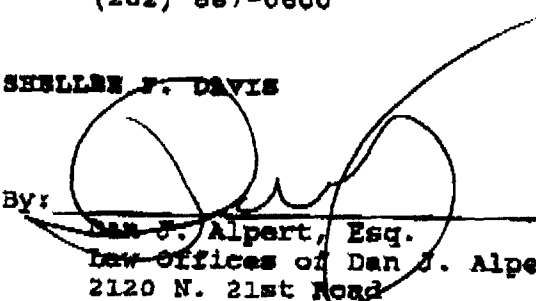
ASF BROADCASTING CORP.

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& Hochberg, P.C.  
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Brown, Nieter & Kaufman,  
Chartered  
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Washington, D.C. 20036  
(202) 887-0600

SHELLE F. DAVIS

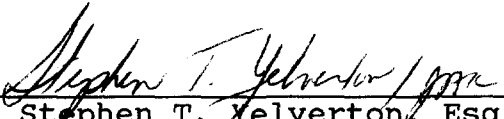
By:   
Dan J. Alpert, Esq.  
Law Offices of Dan J. Alpert  
2120 N. 21st Road  
Arlington, Virginia 22201



- 5 -

(703) 243-8690

**OHIO RADIO ASSOCIATES**

By:   
Stephen T. Yelverton, Esq.  
Yelverton Law Firm  
1101 30th Street, N.W.  
Washington, D.C. 20037  
(202) 625-4321

Date: December 13, 1995

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### **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made by and among David A. Ringer ("Ringer"), ASF Broadcasting Corp. ("ASF"), Wilburn Industries, Inc. ("Wilburn"), Shellee F. Davis ("Davis"), Ohio Radio Associates ("ORA") and William D. Silva ("Escrow Agent").

WHEREAS, each of Ringer, ASF, Wilburn, Davis and ORA have pending before the Federal Communications Commission ("FCC") applications (respectively, File Nos. BPH-911230MA, BPH-911230MB, BPH-911230MC, BPH-911231MA and BPH-911231MC) for a construction permit for a new FM broadcast station to operate on Channel 280A at Westerville, Ohio; and

WHEREAS, the applications are mutually exclusive such that only one of the applications may be granted; and

WHEREAS, the parties wish to avoid further costly and lengthy proceedings before the FCC as well as the burden that such proceedings impose upon the FCC's resources; and

WHEREAS, the parties believe that the settlement proposed herein would be in the public interest in that it would resolve this proceeding and permit the prompt institution of a new FM broadcast service at Westerville, Ohio; and

WHEREAS, the obligations of the parties hereto are subject to the prior approval of the FCC.

NOW, THEREFORE, in consideration of the mutual representations and covenants herein contained, the parties hereto agree as follows:

1. FCC Consent. This Agreement is entered into subject to approval by the FCC or its delegatee, and it will be null and void unless the FCC or its delegatee approves it. The parties shall immediately make good faith efforts to resolve any and all objections in order to obtain prompt approval by the FCC. If the FCC or its delegatee has not approved this Agreement within six (6) months from the effective date hereof, any party, upon written notice to the other parties, may terminate this Agreement, and it shall become null and void.

2. Alternative A. Under Alternative A, Davis shall be the Successful Applicant and each of Ringer, ASF, Wilburn and ORA shall be a Dismissing Applicant.

3. Alternative B. Under Alternative B, ASF shall be the Successful Applicant and each of Ringer, Wilburn, Davis and ORA shall be a Dismissing Applicant.

4. Alternative C. Under Alternative C, ORA shall be the Successful Applicant and each of Ringer, ASF, Wilburn and Davis shall be a Dismissing Applicant.

5. Choice of Alternatives. The parties hereto shall proceed under Alternative A if Davis shall deposit with Escrow Agent the sum of Five Hundred Thousand Dollars (\$500,000.00) (the "Davis Deposit") by 5:00 p.m. Eastern Standard Time on December 12, 1995. Such Deposit shall be in the form of a cashier's or

certified check payable to the Escrow Agent or wire transfer of funds into Escrow Agent's account, and confirmed by Escrow Agent to counsel for the other parties. In the event Davis does not make the Deposit, the parties shall proceed under Alternative B, provided that ASF shall deposit with Escrow Agent the sum of Five Hundred Thousand Dollars (\$500,000.00) (the "ASF Deposit") by 5:00 p.m. Eastern Standard Time on December 12, 1995. Such Deposit shall be in the form of a cashier's or certified check payable to Escrow Agent or wire transfer of funds into Escrow Agent's account and confirmed by Escrow Agent to counsel for the other parties. In the event neither Davis nor ASF makes the Deposit, the parties shall proceed under Alternative C, provided that ORA shall deposit with Escrow Agent the sum of Five Hundred Thousand Dollars (\$500,000.00) (the "ORA Deposit") by 5:00 p.m. Eastern Standard Time on December 12, 1995. Such Deposit shall be in the form of a cashier's or certified check payable to Escrow Agent or wire transfer of funds into Escrow Agent's account and confirmed by Escrow Agent to counsel for the other parties. In the event neither Davis nor ASF nor ORA shall make the required Deposit, this Agreement shall be null and void. In the event Davis, ASF and ORA shall make the required Deposits, only the Davis Deposit shall be retained by Escrow Agent and the ASF Deposit and/or the ORA Deposit shall be returned to the party making the same, and the parties shall proceed under Alternative A.

6. Joint Request. Within one (1) business day after December 12, 1995, assuming any of the Davis, ASF or ORA Deposit is made, the parties hereto will file with the FCC a Joint Request, pursuant to Section 73.3525 of the FCC's Rules, seeking approval of this Agreement, withdrawal of all outstanding Exceptions and Petitions, dismissal with prejudice of the applications of the Dismissing Applicants and grant of the application of the Successful Applicant with no condition materially adverse to the Successful Applicant. A copy of this Agreement, together with all supporting documentation required by Section 73.3525 of the FCC's Rules shall be filed with the Joint Request. All parties agree, and the Joint Request shall provide, that if any application is proposed for grant but the Commission or its delegatee advises or holds that such application cannot be granted without further hearing, such applicant immediately and automatically shall become a Dismissing Applicant and the Escrow Agent shall return that applicant's Deposit. If Davis becomes a Dismissing Applicant, ASF and ORA shall have the option to deposit or redeposit their \$500,000.00 deposits within two (2) business days after the FCC or its delegatee informs the parties that the Davis application cannot be granted without a hearing, and in the event the Commission or its delegatee informs the parties that both the Davis and ASF applications cannot be granted without a hearing. ORA singly will have the option to submit or resubmit its \$500,000.00 deposit within two (2) business days. In the event ORA and ASF both make such a deposit and either application can be granted without

further hearings, the Escrow Agent shall promptly return the ORA Deposit. Alternatively, if neither ASF or ORA makes such a deposit, or the Commission or its delegatee informs the parties that neither the Davis, ASF, or ORA applications can be granted without a hearing, this agreement shall be null and void.

7. Consideration. In consideration for dismissal of the applications of the Dismissing Applicants, each of the Dismissing Applicants shall be paid the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) less one-fifth of the Escrow Agent's Fee ("Consideration"). The Consideration shall be paid by Escrow Agent within five (5) days following finality of an FCC Order or other document approving this Agreement, dismissing the applications of the Dismissing Applicants, and granting the application of the Successful Applicant. The Order shall be deemed final when it is no longer subject to administrative or judicial reconsideration, review or appeal.

8. Unconditional Release. Upon payment of the Consideration, each party and its agents, successors, and assigns hereby releases and forever discharges each of the other parties, including the Escrow Agent, its principals, agents, employees, successors, and assigns from any and all manner of claims, demands, damages, causes of action or suits that might now exist, or that might subsequently accrue by reason of any matter or thing whatsoever growing out of or in any way connected with, directly or indirectly, the prosecution of the applications of the parties.

9. Cooperation. The parties agree to take no action adverse to, or which would materially delay action upon this Agreement, the Joint Request, the grant of the application of the Successful Applicant, or the dismissal of the applications of the Dismissing Applicants. The parties further agree to cooperate with each other and with the FCC by expeditiously providing to one another or to the FCC, or both, all additional information that may be reasonably required, and by expeditiously filing any additional documents that might be necessary or appropriate to comply with Section 73.3525 of the FCC's Rules or to effectuate the objectives of this Agreement.

10. Representations and Warranties. Each party hereto expressly represents and warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such party's legal ability to perform its responsibilities hereunder.

11. Declarations. By executing this Agreement, each party declares under penalty of perjury that this is the only Settlement Agreement among the parties or any of them, and no consideration other than the sums set forth herein have been promised by or to any party. Each party also declares under penalty of perjury that its application was not filed for the purpose of securing a settlement.

12. Escrow. The parties hereto and the Escrow Agent designated herein agree as follows:

A. Promptly following receipt of the Davis Deposit and/or the ASF Deposit and/or the ORA Deposit, the Escrow Agent shall deposit one of the Deposits, in order of preference, the Davis Deposit, the ASF Deposit, the ORA Deposit, in an interest bearing escrow account until such time as an Order is issued by the FCC approving this Agreement, dismissing the applications of the Dismissing Applicants, and granting the application of the Successful Applicant, and such Order becomes final. The Deposits not so deposited in the escrow account shall immediately be returned to the party or parties making the same.

B. Escrow Agent shall deposit the Deposit in a commercial bank doing business in Washington, D.C. in an interest bearing account insured by the Federal Deposit Insurance Corporation and keep the Deposit on deposit so long as the conditions for distribution hereof have not occurred.

C. Within five (5) business days after finality of the Order approving this Agreement, the Escrow Agent shall disburse the funds as provided herein as instructed by each Applicant. All accrued interest, less one-fifth of the Escrow Agent's Fee, shall be returned to the Successful Applicant.

D. In the event the Escrow Agent shall be notified by any party in writing not to disburse the Deposit, the Escrow Agent shall not make a disbursement until all parties have authorized such disbursement.

E. In the event that any party shall notify the Escrow Agent pursuant to paragraph 12D, prior to the date that the



disbursement is due to be made, the Escrow Agent shall promptly notify all other parties. The funds shall nevertheless be disbursed under this Agreement on the thirtieth (30th) day after the FCC Order has become final unless the Escrow Agent has received written notification prior to that date that legal action has commenced in a court of competent jurisdiction. If such notification is timely received, no disbursement shall be made until a final judgment by that court of competent jurisdiction settles any controversy between the parties and instructs the Escrow Agent accordingly, or until the parties settle their controversy and jointly instruct the Escrow Agent in writing how to proceed.

F. Subject to the foregoing, in the event the FCC does not issue a final Order approving this Agreement, dismissing the applications of the Dismissing Applicants and granting the application of the Successful Applicant, and this Agreement becomes null and void pursuant to paragraph 1, the Escrow Agent shall return the Deposit and all accrued interest to the party whose Deposit was being held. In the event there is an alternate Applicant eligible for grant in accordance with paragraph 6, the Escrow Agent shall promptly return the Davis Deposit.

G. The duties and obligations of the Escrow Agent shall be determined solely by the express conditions of this Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement. The Escrow Agent shall not be bound in

any way by any other agreement or contract between the parties (whether or not the Escrow Agent has knowledge thereof), except for this Agreement.

H. The Escrow Agent shall not be responsible in any manner whatsoever for any failure or inability of the parties hereto to honor any of the provisions of this Agreement.

I. The parties hereto agree, jointly and severally, to reimburse and indemnify the Escrow Agent for and to hold him harmless against, any loss, liability or expense (not including counsel fees), incurred without bad faith, willful misconduct or gross negligence on the part of the Escrow Agent, arising out of performance of his duties and obligations under this Agreement, as well as costs and expenses of defending against claim or liability arising out of or relating to this Agreement.

J. The Escrow Agent shall be fully protected in acting upon and relying upon any advice, certificate, notice, direction, instruction, request or other paper or document which the Escrow Agent in good faith believed to be genuine and to have been signed or presented by the proper party; and he may assume that any person purporting to give such advice, certificate, notice, direction, instruction, request or other paper or document, has been duly authorized to do so.

K. The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by him in good faith or for any mistake in fact or law, or for

anything which he may do or refrain from doing in connection herewith, except his own gross negligence or willful misconduct.

L. The escrow portion of this Agreement shall terminate upon the fulfillment of the obligations of the Escrow Agent or the parties hereto have instructed the Escrow Agent to terminate this Agreement.

M. The Escrow Agent may charge a Fee for the performance of his duties and out-of-pocket expenses incurred in such performance. The amount of the Fee shall not exceed his usual and customary rate charged to clients engaged in the radio broadcasting business. Each party shall be responsible for one-fifth of the Fee.

13. Remedies for Breach. Specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

14. Entire Agreement; Benefit. This Agreement contains all the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, heirs and assigns.

15. Counterparts. The parties agree that this Agreement may be executed in counterparts, all which together, so executed, shall constitute one and the same instrument.

16. Notices. Any notices required under this Agreement shall be in writing and delivered, facsimile, as follows:

If to Davis:	Dan J. Alpert, Esq. Fax No. (703) 243-8692
If to ASF:	James A. Koerner, Esq. Fax No. (301) 986-4844
If to Wilburn:	Eric S. Kravetz, Esq. Fax No. (202) 457-0126
If to Ringer:	Arthur Belendiuk, Esq. Fax No. (202) 785-2804
If to ORA:	Stephen T. Yelverton, Esq. Fax No. (202) 625-4363
If to Escrow Agent:	William D. Silva, Esq. Fax No. (202) 686-8282

17. Time of Essence. Time is of the essence in the execution and performance of this Agreement. Each party must deliver a signed copy of this Agreement or a facsimile signature thereon to Escrow Agent at 5335 Wisconsin Avenue, N.W., Suite 400, Washington, D.C. 20015, with copies faxed to other parties by 5:00 p.m. Eastern Standard Time on December 8, 1995.

DEC-06-'95 WED 17:43 ID:

TEL NO:

#024 P01

12/08/95 15:28 FAX 6142724707

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12/08/95 16:08

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12/08/95 17:55 9019884844

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003

- 12 -

IN WITNESS WHEREOF, the parties have hereto set their hands and seal the day and year set forth opposite their respective signatures.

Date: December 6, 1995

David A. Ringer

By: David A. Ringer

ARF Broadcasting Corp.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Wilburn Industries, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Shelley F. Davis

Date: \_\_\_\_\_

By: \_\_\_\_\_

Ohio Radio Associates

Date: \_\_\_\_\_

By: \_\_\_\_\_

William D. Silva

Date: \_\_\_\_\_

By: \_\_\_\_\_

- 12 -

IN WITNESS WHEREOF, the parties have hereto set their hands and seal the day and year set forth opposite their respective signatures.

David A. Ringer

Date: \_\_\_\_\_

By \_\_\_\_\_

ASF Broadcasting Corp.

Date: 12/7/95

By Audeth Frey

Wilburn Industries, Inc.

Date: \_\_\_\_\_

By \_\_\_\_\_

Shellee F. Davis

Date: \_\_\_\_\_

By \_\_\_\_\_

Ohio Radio Associates

Date: \_\_\_\_\_

By \_\_\_\_\_

William D. Silva

Date: \_\_\_\_\_

By \_\_\_\_\_

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- 12 -

IN WITNESS WHEREOF, the parties have hereto set their hands and seal the day and year set forth opposite their respective signatures.

David A. Ringer

Date: \_\_\_\_\_

By \_\_\_\_\_

ASF Broadcasting Corp.

Date: \_\_\_\_\_

By \_\_\_\_\_

Wilburn Industries, Inc.

Date: December 7, 1995

By Charles Wilburn

Shelley F. Davis

Date: \_\_\_\_\_

By \_\_\_\_\_

Ohio Radio Associates

Date: \_\_\_\_\_

By \_\_\_\_\_

William D. Silva

Date: \_\_\_\_\_

By \_\_\_\_\_





- 12 -

IN WITNESS WHEREOF, the parties have hereto set their hands and seal the day and year set forth opposite their respective signatures.

David A. Ringer

Date: \_\_\_\_\_

By \_\_\_\_\_

ASF Broadcasting Corp.

Date: \_\_\_\_\_

By \_\_\_\_\_

Wilburn Industries, Inc.

Date: \_\_\_\_\_

By \_\_\_\_\_

Shallee F. Davis

Date: \_\_\_\_\_

By \_\_\_\_\_

Ohio Radio Associates, INC.

Date: \_\_\_\_\_

By *[Signature]*

William D. Silva

Date: \_\_\_\_\_

By \_\_\_\_\_

01/25/36.00\out\agm\007

*Agreed  
OK without any changes  
previously suggested.*

*[Signature]  
J. D. Carey*